

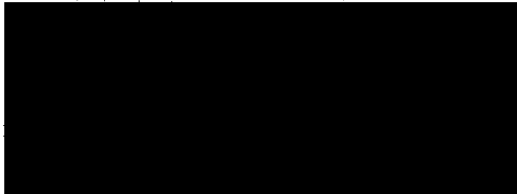


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-98-123-53283 Office: Vermont Service Center

Date:

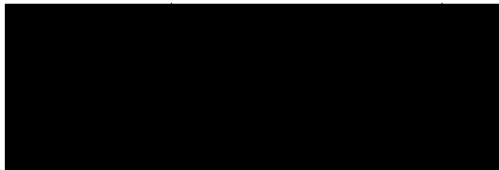
DEC 11 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary E. Mulrean, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a ministerial assistant to the executive director. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, the petitioner's former counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner submitted a certificate of ordination and accompanying letter awarded to the beneficiary in June 1987. On June 9, 1998, the director requested that the petitioner submit additional information. In response, the petitioner described the beneficiary's duties as follows:

Preparation & practice for devotional music . . .
Performing devotional music . . . Studying devotional
music . . . Preparation and meditation for worship
service . . . Leading prayer . . . Preparation and study

for other duties . . . Lay counseling . . . Representing
Regional Director . . . Special Events . . . Attending
weekly organizational meetings as Secretary.

The petitioner further indicated that the beneficiary "has had and continues to have extensive training as a Minister of Sikh Dharma."

On appeal, the petitioner's former counsel argued that the beneficiary's prospective occupation is a religious occupation. Counsel's argument is not persuasive. The petitioner stated that the beneficiary completed "extensive training"; however, aside from a letter attesting to the beneficiary's study of devotional music, the petitioner did not submit any evidence of this training. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Also, the petitioner did not provide any information concerning what was required of the beneficiary prior to her receipt of the certificate of ordination. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). Moreover, based on the description of the beneficiary's duties, as provided by the petitioner, it is not apparent that any specific religious training or theological education would be required of the beneficiary prior to working as a ministerial assistant to the executive director. As such, the petitioner has failed to establish that the prospective occupation is a religious occupation.

Counsel refers to unpublished administrative decisions of this Service regarding appeals of special immigrant religious worker cases to support her appellate statement. While it has not been shown that the facts of the cases are similar, it must be noted that the unpublished administrative decisions relied on by counsel do not have binding precedential value. See 8 C.F.R. 103.3(c). Counsel further argues that the Service had previously granted the beneficiary R-1 nonimmigrant status. The director's decision does not indicate whether the beneficiary's nonimmigrant file was reviewed. Copies of the initial R-1 nonimmigrant visa petition and supporting documentation are not contained in the record of proceeding. Therefore, it is not clear whether the beneficiary was eligible for R-1 classification at the time of the original approval, or if the approval of the R-1 nonimmigrant classification involved an error in adjudication. However, if the previous nonimmigrant petition was approved based on the same position descriptions that are contained in this immigrant petition, the approval would constitute clear and gross error on the part of the Service. As established in numerous decisions, the Service is not

required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988).

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4) or that it has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.